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18 UNITED STATES DISTRICT COURT FOR THE
19 NORTHERN DISTRICT OF CALIFORNIA
20 OAKLAND DIVISION

21 **EPIC GAMES, INC.,**

22 Plaintiff, Counter-Defendant,

23 vs.

24 **APPLE INC.,**

25 Defendant, Counterclaimant.

26
27 **Case No. 4:20-cv-05640-YGR**

28 **DECLARATION OF ANDREW
29 BENNET IN SUPPORT OF
30 NONPARTY AMAZON.COM
31 SERVICES LLC'S JOINDER IN
32 DEFENDANT APPLE INC.'S
33 ADMINISTRATIVE MOTION TO
34 SEAL PX-2339**

35
36 I, Andrew Bennet, declare as follows:

37 1. I make this declaration in support of Nonparty Amazon's Joinder to Defendant,
38 Apple Inc.'s ("Apple") Administrative Motion to Seal PX-2339 (the "Motion to Seal," Dkt. No.
39 514). I am over the age of 18 and make this declaration based on my personal knowledge.

40 2. I am Director of Third-Party Device Partnerships for Prime Video, and am
41 responsible for the distribution of the Prime Video app on third-party devices. Amazon.com
42 Services LLC is the parent company of AMZN Mobile LLC (together, "Amazon").

1 3. Document PX-2339 (“PX-2339”) is an addendum that supplements the Developer
 2 Program License Agreement between AMZN Mobile LLC and Apple. A true and correct
 3 *redacted* copy of PX-2339 is attached as Exhibit 1. An *unredacted* copy of PX-2339 is attached
 4 to Apple’s Motion to Seal, at Attachment 4. *See* Dkt. No. 514-4.

5 4. The Developer Program License Agreement between Amazon and Apple, as
 6 supplemented by PX-2339, is the operative agreement between Apple and Amazon with respect
 7 to the provision of Amazon Prime Video streaming services on iOS and tvOS devices.

8 5. PX-2339 contains competitively sensitive, non-public terms.

9 6. Amazon has taken the necessary and appropriate measures to maintain the
 10 confidentiality of these terms. In negotiating PX-2339, for example, Amazon and Apple agreed
 11 to detailed confidentiality provisions, including non-disclosure obligations. Those confidentiality
 12 provisions are set forth in PX-2339 paragraphs 13.1 to 13.5. Amazon has also taken steps to
 13 maintain the confidentiality of PX-2339 throughout the pendency of this litigation.

14 7. Amazon and Apple engaged in lengthy, strategic, non-public negotiations that
 15 resulted in PX-2339. The terms of PX-2339 are the product of these detailed negotiations, and
 16 many of its terms are unique to Amazon. Although PX-2339 contains terms similar to those that
 17 govern Apple’s Video Partner Program (the “Program”), there are differences between the
 18 Program terms and the terms negotiated in PX-2339.

19 9. Amazon considers the entirety of PX-2339 to be highly confidential, but certain
 20 portions are especially sensitive. Specifically, certain terms in the preamble and signature blocks,
 21 and at paragraphs 2.2, 4.2, 5.1, 8.3, 8.5, 9.4, 11.2 and 14.1 constitute Amazon’s highly
 22 confidential, proprietary information.

23 10. Amazon has devoted significant resources to developing its video streaming
 24 business, and the terms on which Amazon conducts its business and agrees to provide its video
 25 streaming services are closely-held and proprietary.

1 11. Amazon has unique and proprietary processes, strategies, techniques, procedures,
 2 and plans surrounding the operation, distribution, and promotion of video streaming services on
 3 iOS and tvOS devices.

4 12. Amazon's highly confidential proprietary business information provides it with a
 5 competitive edge in the video streaming services marketplace.

6 13. The proprietary terms on which Amazon agrees to provide its video streaming
 7 services are closely-held and competitively sensitive, and disclosure could cause harm to Amazon.

8 14. Disclosure of certain terms of PX-2339 could harm Amazon by providing
 9 prospective business counterparties and competitors with unwarranted visibility into the
 10 proprietary strategies, procedures, and plans regarding the operation, distribution, and promotion
 11 of Amazon's video streaming business.

12 15. Disclosure of certain terms in PX-2339 would reveal the specific, detailed terms
 13 to which Amazon ultimately agreed to provide its video streaming services on iOS and tvOS
 14 devices. Widespread knowledge of what business terms Amazon has agreed to in the past would
 15 put Amazon at a significant disadvantage in future business negotiations.

16 16. Disclosure of certain terms in PX-2339 would reveal the areas in which Amazon
 17 negotiated for unique terms to provide its video-streaming services on iOS and tvOS devices. In
 18 particular, disclosure would show what terms Amazon negotiated for in connection with its
 19 anticipated future technical capabilities and features, and other forward-looking business plans.
 20 Competitors would be provided with insight into, not only Amazon's existing video streaming
 21 business, but also into areas that Amazon considered important for anticipated future technical
 22 capabilities, features, and product development.

23 17. In addition, Amazon has an ongoing business relationship with Apple for the
 24 provision of video streaming services on iOS and tvOS devices, and disclosure of certain terms of
 25 PX-2339 may prejudice Amazon's ability to negotiate subsequent agreements with Apple
 26 regarding this same content. If competitively sensitive terms became public, other developers
 27 negotiating with Apple might demand those same terms – causing competitive disadvantage and

1 economic harm to Amazon. It is also possible that Apple might cease offering those terms to any
2 party, including Amazon – again causing competitive disadvantage and economic harm to
3 Amazon.

4 18. Amazon's request for sealing PX-2339 is as narrowly tailored as possible to avoid
5 causing harm to Amazon, a non-party to this litigation. Amazon seeks to seal only highly
6 confidential proprietary information – as set forth in the PX-2339 preamble and signature blocks,
7 and paragraphs 2.2, 4.2, 5.1, 8.3, 8.5, 9.4, 11.2 and 14.1.

8
9 I declare under penalty of perjury of the laws of the United States of America that the
10 foregoing is true and correct. This declaration was executed this 3rd day of May 2021, in
11 Seattle, Washington.

12
13 /s/ Andrew Bennet
14 Andrew Bennet

1 I hereby attest that I have on file all holographic signatures corresponding to any
2 signatures indicated by a conformed signature (/s/) within this e-filed document.

3 DATED this 3rd day of May 2021.

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5 DAVIS WRIGHT TREMAINE LLP
6 Attorneys for Amazon.com Services, LLC

7
8 By: /s/ Molly Tullman
Molly N. Tullman (CA State Bar No. 244928)

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